2024:BHC-AS:15910

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7194 OF 2021

Rajiv Surendra Doddanavar
Aged about 67 years,
Occupation: Business,
R/o. "Ram Jeevan" Girinar Hill,
Hindwadi, Belgaum, Karnataka.
Through his Power of Attorney Holder
Yuvaraj Ananda Patil,
(Since decd. thr. his heirs and legal representatives)
1A. Shubhadarani Rajiv Doddanavar (Widow)
Age about 61 years,
Occupation: Household,
R/o. H No.1029, Ram Jeevan,
Girnar Hill, Hindwadi, Belgaum.

1B. Brahmi Rajiv Doddanavar, (Daughter)
Age about 39 years,
Occupation: Household,
R/o. 13149, Old West Ave.,
San Diego CA-92129, USA
Through his POA
Yuvaraj Ananda Patil …Petitioners

Versus

1. Madhuri Veerdhaval Chalukya,
Aged about 56 years,
Occupation: Household,
R/o. A158, Indira Nagar, Vijapur Road
Solapur.

2. Shrish Shrikrushna Pandit,
Aged about 80 years,
Occupation: Business,
R/o. Plot No. 16, S. No. 7+8,
Ramnagar Colony, N.D.A. Pashan Road,
Bavdhan, Pune.

3. Dr. Prafulla Rajaram Hede,

Aged about 81 years,
Occupation: Business,
R/o. House No. 239, La Marvel Colony
Donapavala, Goa.

4. Circle Officer, Bhedasgaon
Tal. Shahuwadi, District: Kolhapur

5. Sub Divisional Officer,
Panhala Sub Division, Kolhapur.

6. Additional Collector, Kolhapur.

7. Divisional Commissioner,
Pune Division, Pune.

8. The Hon'ble State Minister,
Revenue & Forest Department,
Government of Maharashtra, ...Respondents.

Adv. A. A Khandeparkar, Sr. Advocate i/b Adv. Dilip Bodake for the Petitioner
Adv. Prasad Dani, Sr. Advocate a/w Adv. Abhijit Kulkarni, Gourav Shahane, Krushna Jaybhay, Sweta Shah, Adv. Mahesh S. Arjun for Respondent No. 1.
Adv. Chetan Patil for Respondent No. 3.

Coram : Sharmila U. Deshmukh, J.

Reserved on : March 20, 2024.
Pronounced on : April 3, 2024.

JUDGMENT :

1. **Rule**. Rule made returnable forthwith and heard finally with consent of parties.

2. By this Petition exception is taken to the order dated 28th September, 2021 passed by the State Government through the Minister of Revenue and Forest Department in RTS Revision

Application No. 3821/1693/PK-103-J5A upholding the order of the Divisional Commissioner dated 26th March, 2021 thereby upsetting the order of the Additional Collector and the Sub-Divisional Officer canceling the mutation entry.

3. The controversy lies in a very narrow compass. The dispute is regarding the right to succeed to estate of deceased by reason of two Wills being propounded and the mutation entry in favour of one party is permitted to be retained on record pending the adjudication by the Civil Court on the aspect of the validity of the Will of the deceased.

4. The facts necessary to be exposited are that one Pralhad Raghavendra Desai was the owner of subject landed property. It appears that Pralhad Raghavendra Desai had executed a Will dated 2nd January, 2007 in favour of the Petitioner which was duly registered. Subsequently, Pralhad Desai executed another Will dated 24th June, 2015 in favour of the Respondent No. 1. The said Pralhad Desai expired on 29th March, 2017. The acquisition of right was reported by the Respondent No. 1 to the Talathi premised on the Will dated 24th June, 2015 which was entered into the Register of Mutations. Subsequently, the entry was duly certified and transferred to the record of rights.

5. Being aggrieved by the mutation in favour of the Respondent

No. 1, the Petitioner claiming to be beneficiary by virtue of Will dated 2nd January, 2007 filed Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short "MLRC") being RTS Appeal No. 26 of 2019 before the Sub-Divisional Officer. The Sub-Divisional Officer vide order dated 21st December, 2019 held that the jurisdiction to decide the validity of the Wills is with the Civil Court and till the validity of the Wills is decided by the Civil Court, the Mutation Entry No. 829 is required to be canceled.

6. Against the order of the Sub-Divisional officer, Respondent No. 1 preferred an Appeal before the Additional Collector. The Additional Collector by order dated 27th November, 2020 dismissed the Appeal upholding the order of the Sub-Divisional Officer. While doing so, the Additional Collector observed that the deceased appears to have entered into various transaction in respect of the subject land and that in addition to the two Wills which have been executed a compromise decree was entered into with third party Dr. Prafulla Hede in respect of the subject land which is pending for execution. The Additional Collector noted that the present Petitioner has instituted Regular Civil Suit No. 1116 of 2019 for cancellation of the Will of the year 2007 and the Respondent No.2 herein had filed Regular Civil Suit No. 17 of 2014 seeking partition.

7. Being aggrieved by the decision of the Additional Collector, the Respondent No. 1 preferred Revision Application under Section 257 of MLRC before the Divisional Commissioner. The Divisional Commissioner came to a conclusion that the revenue authorities do not have the jurisdiction to determine the validity of the registered documents. It was further held that the validity of the Will of the year 2015 executed in favour of Respondent No. 1 was required to be established in the Civil Court and determining the validity of the Mutation entry No. 829 certified on the basis of said Will would amount to determining the validity of the Will itself. Considering the pending civil proceedings, the Divisional Commissioner held that it was expected that the Revenue Authorities would restrain themselves from giving any finding when the matter is subjudice. The Divisional Commissioner held that the Petitioner had filed Regular Civil Suit No.1116/2019 on 30th August, 2019 and thereafter the cancellation of the Mutation Entry No. 829 by the Sub Divisional Officer vide order dated 29th December, 2019 suffers from infirmity. Vide order dated 26th March, 2021, the Divisional Commissioner allowed the Revision Application upsetting the finding of the Sub-Divisional Officer and Additional Collector.

8. As against this, Revision Application was preferred by the

Petitioner before the State Government through the Minister of Revenue. The Hon'ble Minister observed that as per the legal position pertaining to the succession rights the last Will and testament will be accepted and accordingly mutation entry No. 829 has been properly certified. It was held that the Will of the year 2015 executed in favour of the Respondent No. 1 was the later Will. It was further held that the validity of the Will cannot be examined by the Revenue Authorities which is required to be established in the Court of law and the Sub Divisional Officer as well as the Additional Collector has determined the validity of the Will and have canceled the mutation entry No. 829. It was further held that in respect of the said property, the Respondent No. 1 as the legal heir has been granted mining lease under order dated 14th August, 2019 which has not been challenged in the Civil Court till date. It was further held that as the validity of the Will was subjudice, it was necessary for the Revenue Authorities to restrain themselves including testing the validity of the mutation entry No. 829. It was held that the parties would have a right to effect the mutation entries in accordance with the final decision of the Civil Court. Vide order dated 28th September, 2021, the Hon'ble Minister upheld the finding of the Divisional Commissioner restoring the Mutation Entry No. 829 on record and dismissed the Revision Application.

9. Heard Mr. Khandeparkar, learned Senior Advocate for the Petitioner, Mr. Dani, learned Senior Advocate for Respondent No. 1 and Mr. Patil, learned Counsel for Respondent No. 3.

10. Mr. Khandeparkar, Learned Senior Advocate for the Petitioner has taken this Court through the findings in the appeal proceedings as well as the revision proceedings. He submits that the Hon'ble Minister after holding that the validity of the Will will be subject to the civil court proceedings has thereafter restored the mutation entry No. 829. He submits that without the rights under the Will being crystallized in the civil court, the mutation entry could not have been certified in favour of Respondent No. 1. He submits that the Respondent No. 1 had filed an Application for probate which came to be withdrawn unconditionally on 5th February, 2023. He submits that as the Will is not probated no right can be claimed in respect of the subject property. He submits that on the basis of the mutation entry, the Respondent No.1 has entered into an agreement with third party for assignment of mining rights. He submits that by virtue of mutation, ownership rights have been exercised by the Respondent No. 1 and as such, the mutation entry is required to be kept in abeyance. Drawing support from the decision of the Apex Court in the case of ***Jitendra Sing vs. State of Madhya Pradesh & Ors. [2021 SCC***

OnLine SC 852] he submits that the settled position in law is that in event of title being claimed on basis of Will, the propounder of the Will is required to get his rights crystallized in the civil court and thereafter necessary mutation entry can be made. He submits that order of the Hon'ble Minister is flawed as it delved into the issue of succession and held that the subsequent Will is valid. He submits that the Sub-Divisional Officer and the Additional Collector in view of the civil proceedings have rightly canceled the mutation entry. He relied upon the decision of the ***Madhya Pradesh High Court delivered on 23rd February, 2024 in Writ Petition No. 2301 of 2024.*** He submits that the Madhya Pradesh High Court has held that if the Revenue Authorities act on the basis of unproved Will it amount to give a complete go by to the provisions of the Evidence Act and that the authenticity of the document can only be decided by the civil Court.

11. Mr. Patil, learned counsel for Respondent No. 3 who is third party intervener submits that the Respondent No. 3 had entered into a compromise decree with the deceased Pralhad Desai which is now put in execution in respect to the suit properties and that the certification of the mutation entry affects his right. He would urge that the compromise decree being put into execution by the Respondent No. 3, pending the said adjudication, the mutation entry ought to have been canceled.

12. *Per contra,* Mr. Dani, learned Senior Advocate for Respondent No. 1 would question the locus of the Respondent No. 3 to intervene in the present proceedings. He submits that the rights of Respondent No. 3 can be adjudicated in the execution proceedings and he was not a party to the proceeding before the Revenue Authorities. He further submits that considering the provisions of Section 149 and Section 150 of the MLRC, an Application was rightly made to the Revenue Authorities based on the Will executed in favour of Respondent No. 1. He submits that the mutation entry was duly certified after following the prescribed procedure and the dispute has been raised after a period almost two years after the certification. He would further submit that dispute is as regards the validity of the Will which is the subject matter of the civil proceedings in which proceedings, the interim relief application was not pursued by the Petitioner. He submits that the Application seeking probate of the Will was withdrawn as the validity of the Will was challenged. He submits that the Petitioner had suppressed the filing of the civil suit in the application before the Sub-Divisional Officer. He submits that the Hon'ble Minister has rightly held that as the validity is challenged in the pending proceedings, the same will be subject to the outcome of the civil proceeding. He submits that there is no Application has been filed by the Petitioner for effecting mutation in their name in the revenue records and no property can be permitted to stand in the name of dead person. He relies upon the decision of the Apex Court in the case of ***Balwant Singh & Anr. Etc vs Daulat Singh (Dead) By L.Rs*** **[1997 (7) SCC 137]** to emphasise that the mutation entries does not create or extinguish title and is an enabling provision for the purpose of paying land revenue in question.

13. In rejoinder Mr. Khandeparkar, learned Senior Advocate would contend that there was no notice issued to the Petitioner while certifying the mutation entry. He submits that the deceased had expired on 29th March, 2017 and the liability was upon the Respondent No. 1 to establish the validity of the Will before the application can be made to the Revenue Authorities. He submits that the provisions of Section 157 of the MLRC raises a presumption as to the correctness of entries in the revenue records and would submit that based on the mutation entry, Respondent No. 1 has been dealing with the subject land. He would further submit that there is material to demonstrate that no notice was issued nor the prescribed procedure was followed.

14. Rival contentions now fall for consideration

15. Before dealing with the factual matrix of the present case, it will be profitable to refer to the scope of powers of the revenue officers under Section 149 and Section 150 of MLRC which reads thus:

> **“149. Acquisition of rights to be reported:**
>
> Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said *Talathi* shall at once give a written acknowledgment of the receipt of such report to the person making it:
>
> **Provided that**, where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the *Talathi*
>
> **Provided further that**, any person acquiring a right with the permission of the Collector or by virtue of a registered document shall be exempted from the obligation to report to the *Talathi*
>
> **Provided also that**, where a person claims to have acquired a right with the permission of the Collector where such permission is required under the provisions of this Code or any law for the time being in force, such person shall on being required by the *Talathi* so to do produce such evidence of the order by which such permission in given as may be required, by rules made under this Code.
>
> **150. Register of mutations and registers of disputed cases**

(1) The *Talathi* shall enter in a register of mutations every report made to him under Section 149 or any intimation of acquisition or transfer under Section 154 or from any Collector.

(2) Whenever a *Talathi* makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the *Chavdi*, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

Provided that, where the record of rights are maintained under section 148A by using the storage device, as soon as the *Tahsildar* in the *Talaka* receives an intimation under section 154, the Talathi in the *Tahsildar* office shall send it to all persons appearing from the record of rights or register of mutations to be interested in the mutation and to any other person whom he has reason to believe be interested therein and also to the concerned *Talathi* of the village, by short message service or electronic mail or any such device as may be prescribed; and upon receipt of such intimation, the *Talathi* of the village shall immediately make an entry in the register of mutations:

Provided further that, no such intimation as provided under the first provise for shall be required to be sent by the *Talathi* in the *Tahsildar* office to the persons who have executed the document in person before the officer registering the document under the Indian Registration Act, 1908.]

(3) When any objection to any entry made under sub-section (1) in the register of mutations is made either orally or in writing to the *Talathi,* it shall be the duty of the *Talathi* to enter the particulars of the

objections in a register of disputed cases. The *Talathi* shall at once give a written acknowledgment for the objection to the person making it in the prescribed form.

(4) Disputes entered in the register of disputed cases shall as far as possible be disposed of within one year by a Revenue or Survey Officer not below the rank of an Aval Karkun and orders disposing of objections entered in such register shall be recorded in the register of mutations by such officer in such manner as may be prescribed by rules made by the State Government in this behalf.

(5) The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf:

Provided that, an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction, as the case may be, shall be certified by any Revenue or Survey Officer not below the rank of an Aval Karkun in such manner as may be prescribed:"

16. Conjoint reading of Section 149 and Section 150 of MLRC indicates the procedure prescribed for mutating the names in the record of rights upon acquisition of the rights enumerated therein. The acquisition of rights is required to be reported to the Talathi within three months from the date of acquisition who shall enter the information in register of mutations and shall give intimation to the concerned. In event of any objection received, the particulars are required to be entered into a register of disputed cases and after the disputes are disposed of, the entries are duly certified and transferred from register of mutations to the record of rights.

17. Although it has sought to be contended by Mr. Khandeparkar and Mr. Patil that the procedure prescribed has not been followed and no notice was issued, there is no material on record to demonstrate that any such grievance was raised in the proceedings before the revenue authorities. Before this Court also, nothing has been pointed out from the record that the prescribed procedure has not been followed. The provisions of Section 149 and 150 of MLRC makes it evident that while updating the revenue records, the revenue authorities are not conferred with the power to adjudicate the disputed rights of the parties to the property which is within the domain of the Civil Courts.

18. The orders of the Revenue Authorities as well as Hon'ble Minister would indicate that the Revenue Authorities agree that the question of ownership can be decided only by a civil Court yet they have adjudicated the issue of recording of Mutation Entry in favour of the Respondent No.1. The Sub Divisional Officer as well as the Additional Collector in view of the pending civil dispute have canceled the Mutation Entry No. 829 whereas, the Divisional Commissioner and the Hon'ble Minister have upheld the certification of the mutation entry pending the final adjudication by the civil Court. Once it is agreed that the revenue authorities have no jurisdiction to decide the ownership rights in case of dispute of validity of the Will, the appropriate course, in my opinion, is to keep the mutation entry in abeyance pending the adjudication of rights in civil Courts.

19. No doubt, it is settled position in law that the revenue records are for fiscal purposes and do not confer any title in favour of any person. There is no quarrel with the proposition laid down in case of ***Balwant Singh and Anothe rvs Daulat Singh (dead) by Lrs and Others*** (supra) relied upon by learned Senior Advocate for the Respondent No 1. Despite that being so, it cannot be disputed that the certification of the mutation in favour of a particular party inevitably is linked to the issue of ownership of the person in respect of the said property subject to the rights being finally determined in the civil proceedings. The mutation entries though do not confer any title upon any person are undoubtedly used as a corroborative piece of evidence to establish certain rights of the parties in relation to the property. A case in point is the agreement which has been executed by Respondent No. 1 in favour of the third party assigning the rights of mining lease, contains a specific recital as regards the Mutation Entry No.829 which was duly certified on 12th June, 2017. It is thus evident that though not conferring or deciding the issue of title the mutation entries are invariably linked to the issue of ownership.

20. The Sub Divisional Officer and Additional Collector on one hand by canceling the Mutation Entry and the Divisional Commissioner and the Hon'ble Minister on the other hand by restoring the Mutation Entry have in fact indirectly adjudicated the issue involving justification of the Mutation Entry. The impugned order of the Hon'ble Minister in fact goes one step ahead and observes that the subsequent Will in favour of Respondent No. 1 is valid and the Mutation Entry No. 829 based on the said Will has been rightly certified and for supporting the restoration of the Mutation Entry considers the order of the transfer of mining lease in favour of the Respondent No 1. The said findings are clearly unsustainable.

21. In the instant case, considering the serious dispute of title to the subject property with two Wills being propounded and compromise decree being put in execution in respect of the subject property, to prevent multiplicity of mutation entries, in my opinion, Mutation Entry No. 829 is required to be kept in abeyance till the issue of ownership is decided by the Competent Civil Court.

22. Even if no application has been preferred by the Petitioner for mutating his name on the basis of the Will of the year 2007, the fact remains that there is challenge to the Mutation Entry No. 829 by the Petitioner by filing of Appeal under Section 247 of MLRC. The dispute is existing as regards the validity of the Will and the issue is subjudice, however, considering the agreement dated 20th September, 2018 executed by the Respondent No. 1 in favour of third party assigning the mining rights, the probability of the said property being subject to third party dealings by virtue of continuation of the Mutation Entry cannot be ruled out.

23. There is no provision of MLRC pointed out to this Court which prohibits the Mutation Entry from being kept in abeyance pending the adjudication by the civil Court on the validity of the Will. As far as the payment of land revenue is concerned, the provisions of Section 72 of MLRC provide for payment of land revenue by any person interested and would not come in the way of the interested party from making payment of the land revenue.

24. In view of the discussion above, the Mutation Entry No. 829 is directed to be kept in abeyance till the issue of ownership is decided by the Competent Civil Court.

25. Consequently, the order of the Sub-Divisional Officer dated 21st

December, 2019 and the order of Additional Collector dated 27th November, 2020 canceling the Mutation Entry No. 829 and the order of Divisional Commissioner dated 26th March, 2021 and the order of Hon'ble Minister dated 28th September, 2021 restoring the Mutation Entry No. 829 are quashed and set aside. Petition is disposed of in the above terms.

[Sharmila U. Deshmukh, J.]

Signed by: Harish V. Chaudhari
Designation: PA To Honourable Judge
Date: 04/04/2024 11:14:41